

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37549
Docket No. SG-37403
05-3-02-3-448

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Terminal Railroad Association of St. Louis)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Terminal RR Ass’n of St. Louis (TRRA):

Claim on behalf of D. J. Freppon, C. E. Rogers, R. E. Robinson and M. J. Breier, for 40 hours straight time for Claimant Freppon, 16 hours straight time each for Claimants Rogers and Robinson, and eight hours straight time for Claimant Breier, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it allowed employees not covered by the Signalmen’s Agreement to install signal conduit and cable on March 21, 22, 23, 27 and 28, 2001, and deprived the Claimants of the opportunity to perform this work. Carrier’s File No. 013.30.1. General Chairman’s File No. S-SR-157. BRS File Case No. 12045-TRRASL.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

As potential Third Parties in interest, the International Brotherhood of Electrical Workers (IBEW) as well as the Brotherhood of Maintenance of Way Employees (BMWE) were advised of this dispute.

The IBEW responded by advising that they "... decided not to file a Third Party Response."

The BMWE responded by advising as follows:

"This response is not a disclaimer to our work on this property and is simply a statement that the right of the Brotherhood of Maintenance of Way Employees to perform work of our classifications is fully protected by the controlling Agreement in effect on the property with the Carrier and to which the Board will give full consideration in rendering its decision."

This dispute had its origin in a penalty claim presented by the Organization on May 11, 2001, in which it was alleged that on the dates listed in the Statement of Claim employees from the B&B Department, the Electrical Department, the Communication Department and the Track Department were utilized to install signal cable conduit in the Carrier's Madison hump yard. The Organization contended that the use of these "other craft" employees violated the Signalmen's Scope Rule because the work in question was performed solely for the operation of the signal system and therefore could have and should have been performed by Signal Department employees.

The Carrier pointed out that, in addition to the "other craft" employees mentioned by the Organization, there were also Signal Department employees working with these "other craft" employees on the dates in question installing the conduit; that the work in dispute is not covered by the Signalmen's general Scope Rule; that the well-established practice on this property showed that work of this

type has historically been performed not only by Signalmen, but also by employees of other crafts as well as by outside contractors. Therefore, the Carrier asserts that the Claimants were not deprived of any work to which they were properly entitled.

The Board reviewed the evidence presented in this case and finds that the Organization has not met its required burden of proof. The evidence of record supports the Carrier's position that work of the type complained of here, that is digging trenches, laying conduit and backfilling trenches, is not work which accrues exclusively to Signalmen either by specific Rule requirement or by established past practice. The work history on this property simply does not support the Organization's contention.

However, there is one item found in this case record which requires a *Gratis Dictum* comment by the Board. That is the unrebutted, unchallenged, undenied statement attributed to a senior Carrier Officer in which contempt and disdain is displayed toward the negotiated Rules Agreement.

"I don't give a shit about your contract. I'm gonna do whatever I want."

Such language is not an acceptable managerial posture and is not in consonance with the Carrier's sanctimonious reference to the "Preamble" statement of the January 30, 1997 Agreement which states:

"A spirit of goodwill and cooperation between the Signalmen, the Management and their respective representatives is essential to safe and efficient operations, and all concerned should so conduct themselves so as to promote that spirit."

Having said that, however, the Board must be guided by the existing Agreement language as well as the precedential decisions which have been rendered on this subject. In that regard, the Board is faced with Third Division Awards 29679, 31347 and 31641 each of which previously considered a claim basically the same as the one found in this case. It is a well-settled maxim that where prior Awards exist which involve the same parties, the same Agreement language, the same or essentially similar issues and arguments, those prior Awards will be

considered as binding on the parties absent a clear showing that the prior Awards were palpably erroneous. No such showing has been made here. Therefore, it must be held that these prior Awards are dispositive of the matter at hand and support denial of the present case.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 20th day of July 2005.